

(930)

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JASON ERIC BENSON,

Plaintiff **FILED SCRANTON**

v.

CIVIL ACTION NO. 1:CV-01229

JUDGE CALDWELL

DEC - 4 2001

MAGISTRATE JUDGE BLEWITT

THOMAS DURAN, et al.,

Defendants

JURY TRIAL DEMANDED

PER

DEPUTY CLERK

PLAINTIFF'S RESPONSE TO THE ADAMS COUNTY DEFENDANT'S
AS WELL AS DEFENDANT'S RONALD LONG'S AND WILLIAM ELLIEN'S
MOTIONS FOR SUMMARY JUDGMENT

AND NOW, come the plaintiff Jason E. Benson, pro se, responding to the Adams County Prison defendant's as well as, defendant's Ronald Long, and William Ellien's Motions for Summary Judgment. The plaintiff will address them collectively and moves for the denial of each based on the following:

1. The crux of plaintiff's case, primarily depends on the use of expert testimony on the issue of a serious medical need. Epilepsy is common knowledge among society but, the intricacies will need to be brought/explained in laymens terms especially, before a jury. It was evident to petitioner upon the filing of his complaint that expert testimony would be needed hence, his Motion for Appointment of Counsel in June, 2000. Unfortunately the motion was denied on August 22, 2000. Furthermore, it's a common misconception that applying for counsel is synonymous with applying for expert testimony.

2. Naturally, defendant's Long, and Ellien, would benefit from plaintiff's inability to afford counsel/expert testimony and is manifestly apparent in their pleadings and citation of authority; Boring v. Kozakiewicz, 833 F.2d 468 (3d Cir.1987).

3. Likewise, the Adams County Prison defendant's have without citing case law, effectively shown the Court their intentions by way of an Affidavit of Mr. Ronald H. Traenkle, a Law Enforcement Professional. See Adams County Prison defendant's Affidavits. Interestingly, there are a host of rulings on the above issue but, one in particular comes to mind: Parham v. Johnson, 126 F.3d 454 (3d Cir.1997). In Parham, our Court of Appeal dealt with a situation similar to the case at bar, "Holding that expert testimony is necessary when the seriousness of injury or [illness] would not be apparent to a lay person." Thus, according to the District Court, Parham, had to produce an expert witness and because he did not, the Court ruled in favor of the defendant's for summary judgment. The Court went on stating that "This finding by the District Court is especially startling because when the District Court denied Parham's, Motion for Court Appointed Counsel, the District Court stated that it did not seem likely that expert testimony would be needed in the case." Id.

4. Indeed, the case at bar, will depended on a jury's belief in either plaintiff's expert witness or the defendant's. For the reasons stated above, the Court isn't without sufficient information and the correct standard(set by the Third Circuit Court of Appeals)to appoint an expert witness on it's own behalf or for the plaintiff.

5. Contrary to defendant Long's, denial of ever being deliberately indifferent to plaintiff's serious medical needs, defendant Long, is attempting to persuade the Court into believing that all of plaintiff's prior seizures occurred when he was intoxicated and giving what appears to be expert testimony by stating "that Phenobarbitol is an addictive barbituate; that Phenobarbitol is not a good seizure medication

for the long term; and given the fact that Mr. Benson's seizures usually occurred when intoxicated--an unlikely condition while incarcerated, in the exercise of Dr. Long's professional judgment he believed that it would be more appropriate to prescribe Dilantin for plaintiff's seizure disorder." (Dr.Long's Declaration ¶ 9; Exhibit "C" pp.3,11) From the way it's explained to the Court, one would be led to believe that plaintiff's last seizure occurred while he was intoxicated. Nothing is further from the truth; yes, the plaintiff's last seizure at the time of Long's examination of plaintiff on February 24, 1999, was prior to Christmas, 1998. But, Long, isn't relating to the Court the fact that when plaintiff had the seizure prior to Christmas, 1998, the plaintiff was incarcerated since May 22, 1998, and the seizure occurred while plaintiff was taken from SCI-Camphill, to Court and back to Camphill. The plaintiff never had a chance to get intoxicated.

6. More importantly, defendant Long's professional judgment about Phenobarbital being an addictive barbituate and not good seizure medication for the long term, is a ruse to state the least. The plaintiff directs the Court's attention to [Dr.Long's Declaration; Exhibit "C" pp. 16,17,18,19] where it's clear that from February 1, 1999, until May 31, 1999, defendant Long, prescribed according to his "Professional Judgment" Phenobarbital and Dilantin. Was this some sort of testing going on at the plaintiff's expense, if so, it's Unconstitutional. Regardless, of whether the plaintiff stated that the medication made him jittery, it's a known fact that if an epileptic refuses his anti-convulsive medication, he will be locked in the infirmary until he complies with medication requirement.

7. On September 5, 2001, defendant Long, issued a subpoena to the records custodian here at SCI-Smithfield, requesting "any and all medical records and any and all documents pertaining to inmate grievances filed by inmate Jason Benson (DS-6483)." See (Plaintiff's Motion to Preclude Expert Testimony...; Exhibits "A,B, & C") Every time the plaintiff requests a copy of his medical records, the defendant's come up with more excuses not to turn them over; starting in March, 2001, and the latest request was on September 13, 2001; see exhibits "A, 1 & 2," attached hereto. The plaintiff cannot simply listen to defendant Long, assert all sorts of "Professional Judgments" [or better yet, expert testimony] and use plaintiff's medical file to support his opinion when, Long, and his attorney's have clearly engaged in discovery violations. Hence, plaintiff's Motion to Preclude Expert Testimony and Motion for Sanctions for Blatent Discovery Violations. Likewise, the Adams County Prison defendant's and defendant Ellien's attorney's have previously been notified by request for the production of documents, that plaintiff sought a true and correct copy of the medical records and all other information secured by them. However, because none of the defendant's fancied to honor the request, the plaintiff also sought the preclusion of expert testimony and precluding all of the defendant's [collectively] from using any information in the plaintiff's medical records/files. See (Plaintiff's Motion to Preclude Expert Testimony...; Exhibits "D & E"; and Exhibits, "B, 1 & 2" attached hereto.

8. The plaintiff has suffered the insidious tactics of all of the defendant's attorney's and attempted to put a stop to the defendant's receiving his medical records pursuant to the Department of Corrections

Administrative Directives and Memorandums, (DC-ADM 003, Release of Information Policy). Pursuant to that policy, a prisoner must fill out and sign a DC-108, Authorization For Release of Information, if he chooses to have his personal information released; see Exhibit "E" of Plaintiff's Motion to Preclude Expert Testimony. In the case sub judice, the plaintiff filed an Official Inmate Grievance, the same day he received the Adams County Prison defendant's request for his medical files. The purpose of plaintiff filing the grievance was to keep the defendant's from receiving any records or files because, the plaintiff cannot be sure whether any of the records/files that have already been released are true and correct. Apparently, the Adams County Prison defendant's as well as Long's and Ellien's attorney's have compensated this "Facilities Grievance Coordinator and the Records Custodian" very luxuriantly to produce records that only the Defendant's and their Attorney's have seen.

9. The plaintiff has indicated various questionable absurdities in the medical records submitted by defendant Long. Not one iota of the information in those records/exhibits is believable by the plaintiff and he respectfully requests that the Court draw an adverse inference to the records/exhibits due to all of the defendant's failure to turn them over to the plaintiff. It is aparent to plaintiff that there is a [hidden] factor eveloping their austere refusal to turn over the documents the plaintiff needed to review in assurance of their authenticity. Their secretive acts are quite perplexing, in that, plaintiff would not have opposed the release of the records if they were turned over; perhaps the defendant's think that plaintiff's medical documentation is not protected from disclosure to them but, protected from plaintiff.

10. The facts of the matter is that the defendant's have received medical documentation that is protected Constitutionally and can only be released if the plaintiff waives any and all rights to confidentiality. See DC-ADM 003; and Heicklen v. D.O.C., 769 A.2d 1239 (Pa.Cmwlth.2001); Times Publishing Company v. Michel, 633 A.2d 1233 (1993), petition for certiorari denied, 645 A.2d 1321 (1994).

11. Did the Adams County Prison defendant's follow it's Policy and Procedure as set forth in A.C.P. Policy 300-6, et seq., and the Oleoresin Capiscum Aerosol Training Manual in use on August 27, 1999? Suggested answer: No. First of all, the Court needs to review the videotape or documentation of the Adams County Prison defendant's Use of Force; because, there are too many different versions being told and none of them actually come anywhere near the truth; according to defendant Duran, a "true and correct copy" is supposed to be attached to his affidavit. See Affidavit of Warden Thomas Duran, at ¶ 12.

11. The plaintiff asserts to the Court that this response, in it's entirety is a "Statement of Disputable Facts" and calls into question everything the defendant's, their attorney's, and the Law Enforcement Professional Nor, will the plaintiff waist this Court's time with another version of a Procedural History that's adding to the confusion created by the defendant's.

12. The defendant's first argument seeks summary judgment for defendant's Cluck, and Hankey, because "Neither Mr. Cluck nor Ms. Hankey, is seen or heard doing anything improper in regard to Mr. Benson on the videotape." (Brief in Support for Mtn for Summary Judgment pg. 7, ¶ 2.) Naturally this argument must fail; according to Adams County Prison Policy and Procedure Manual for the Use of Force, § II. B. 5. it states:

"The Shift Commander/Administrator conducts an investigation of the incident to determine whether proper procedures were followed in using physical force according to existing policies and procedures. This investigation is included as part of the original report and forwarded to the Deputy Warden for review."

According to their policy the deputy warden reviewed whether or not the proper procedures were followed. Hence, their involvement is evident by their refusal to notify the other staff members that were involved in the incident, of their inappropriate disregards for the proper procedures. Furthermore, defendant Cluck, physically mauled plaintiff, thereby causing some of the injuries incurred; and defendant Hankey, at all times relevant had the power and/or the authority to stop the assault on the plaintiff because she is charged with knowing the proper procedures and policies. See § I. C. 2., which states:

"The Deputy Warden is hereby Charged with the enforcement of appropriate regulations governing the use of prison weapons."

Attached hereto is a copy of the relevant policy as it's been reproduced by the defendant's for the plaintiff. See Exhibit "C, 1 thru 8" In addition, the defendant's argue that Heintzelman, and Shelton, were not in command of the situation, just following orders and part of the staff present at the time. Well, the plaintiff has alleged and has shown that the defendant's assaulted him because of the maleficenceness of Duran's order. Nor, is Duran, immune under the traditional concepts of respondeat superior; as he is evidenced on film stomping plaintiff in his neck.

13. It is beyond the understanding of the plaintiff as to why the defendant's are prevaricating/fabricating their actions through their attorney's and/or in the affidavits submitted to the Court. When it's been quite clear for some time know that Duran, Cluck, Jennings, Orth, and Shelton, were all suspended from their positions pending the outcome of an investigation. The investigation centered around charges of " ASSULTS, RAPE, ABUSE OF AUTHORITY, SEXUAL HARASSMENT, ET CETERA ET CETERA," and each of these defendant's were eventually fired.

14. The force employed by the defendant's to allegedly obtain the plaintiff's compliance with prison policy was unreasonable and undertaken to implement the unnecessary and wanton infliction of pain for the purpose of corporal punishment; see Hudson v. McMillian, 503 U.S. 1,5,6-7 (1992). Strip searches are necessary; however, there must be a policy and procedure that's adhered to. In the case at bar, the defendant's blatantly chose to disregard the proper procedure which was necessary under the circumstances. Obviously, plaintiff would not be addressing the Court had they been right. Again, the plaintiff must draw the Court's attention to exhibit "C-6; § II. B. 10." which states:

"The following options constitute the Force continuum, **beginning with the least amount** of force that can be reasonably expected to control the inmate or the situation:

- a. Show of Force *
- b. Control Techniques *
- c. Oleoresin Capsicum Aerosol *
- d. Electronic Body Immobilizing Device *
- e. Active Counter measures
- f. Chemical munitions other than O.C.
- g. Firearms

* These options are equivalent methods of control, subject to availability under the circumstances.

The steps that must be taken when using force is clear and must begin

with the least amount of force and progress accordingly. All throughout the defendant's pleadings there are assertions of them following the proper procedures, a curious review of some of them is in order. In the defendant Shelton's affidavit, he stated: "Mr. Benson had been asked or directed at least five or six times to comply with routine procedure... It was my understanding and belief that he was simply refusing to cooperate because he was disgusted...Lieutenant Jennings sprayed pepper foam in Mr. Benson's face...For his own protection and the protection of others, Mr. Benson was taken to floor by Sergeant Heintzelman, Lieutenant Jennings, Deputy Warden Cluck and me." (Affidavit of Defendant Shelton, at ¶¶ 9,10) 15.

The defendant Jennings, stated "...I believed it was necessary to consult with the Warden and both Deputy Wardens. We all proceeded to the medical room where Benson was...The next thing to occur was...Cluck giving Benson an order to strip, but Benson continue to refuse. On the orders of the Warden, i sprayed Benson with OC pepper foam..." (Affidavit of Defendant Jennings, at ¶¶ 5,6.); (Affidavit of Defendant Cluck, at ¶¶ 3,4.): "The Warden was notified and he and several other staff members came to the intake area...After repeated refusals on Benson's part, Lt., Jennings sprayed Benson with OC pepper spray..." (Affidavit of Defendant Duran, at ¶¶ 5,6.): "However, Mr. Benson repeatedly and steadfastly refused to respond 'first to verbal request, second, to a verbal command and third, to a show of physical force!...Because of Benson's steadfast refusal to comply with the strip search procedure, 'he was [deliberately] kept in restraint (handcuffs and leg shackles)' until he voluntarily agreed to comply with this procedure." Last, but not the least, it's necessary to review relevant portions of the defendant's "Retained Professional's" affidavit; Mr. Ronald H. Traenkle, who has an extended knowledge of Law Enforcement, and his "Report" in this matter is quite off the mark.

16. The first thing the plaintiff noticed, is that the "Materials Reviewed" by Mr. Traenkle, e.g., (#1. Deposition transcript of Jason E. Benson; August 30, 2001; #11. Adams County Prison Extraordinary Occurrence Report prepared by Briton L. Shelton on August 27, 1999; #12. Adams County Prison Extraordinary Occurrence Report prepared by Lt. John Jennings on August 27, 1999;) were never submitted to the plaintiff per his request for production of documents.

17. The plaintiff then noticed in "the Summary of the Incident" at ¶¶ 2, 4, 6, & 7, there are interesting notables; but, the one that stands out states: "Once conflict resolution, verbal request, verbal command, and a show of force had proven ineffective in resolving the standoff, corrections personnel prepared to advance to the next step in the force policy. A video camera was brought to the room to record the incident." Mr. Traenkle, states that "it is his opinion to an extremely high degree of professional certainty the **conduct of the involved Adams County Prison personnel on August 27, 1999 was proper.**" (Traenkle's Affidavit; Exhibit "B" § IV.E; and see also § IV.C.) The latter section is important for one reason and that being "...the use of the 'swarm and take down' technique... was reasonable, proper, and necessary'..."

18. All of the above goes straight back to the A.C.P. Policy and Procedure: 300-6; II. B. 10; the Force continuum. Where it clearly states that it begins with the least amount of force and continues through the steps as needed. Also stated above, all of the defendant's seem to agree that the plaintiff refused to strip and that it only took one guard to cuff the plaintiff with his hands behind his back and shackle him at the ankles. The defendant's also agree that there were Five (5) males in the room, excluding plaintiff and that is what was called a show of force.

19. The show of force was the first step in the continuum and the very next step was the "Control Techniques;" which is basically the "Swarm and Take Down" technique their professional law enforcement party spoke of. The swarm and take down technique works in the following manner: #1. there must be five personnel; #2. four personnel are assigned an individual limb of the target i.e., (1-has the right leg; 2-has the left leg; 3-has the right arm; and 4-has the left arm); #3. the four personnel are told to take the inmate down by grabbing their assigned limb; #4. once the inmate is on the ground/floor, the fifth person has handcuffs and shackles that he puts on the inmate.

20. The defendant's willfully bypassed the second step in the use of force continuum and went straight to the third step. The plaintiff never once threatened any of the prison personnel with bodily harm; never made any aggressive or physically threatening postures, for one, because he couldn't, he was restrained. Without spraying plaintiff with the chemical weapon OC pepper foam, the defendant's could have easily stripped him of his clothing enough to ensure that plaintiff was not hiding any foreign objects. Furthermore, the defendant's force continuum states that OC pepper foam, and Electronic body immobilizing devices are equivalent control techniques. That just isn't true and if it were it means that their policy is overbroad; it is. According to their policy the defendant's are allowed to use deadly force, for "self defense; serious offenses against persons; and escape. See exhibit "C-1" attached hereto. However, under their use of physical force, § II.A.1 & 2: has restrictions that state: "Only the minimal amount of force necessary is used to control an inmate or situation in the prison;" (see #s 1,2, & 8) exhibit "C-4") Number 8, states that the defendant's should have used minimal force to "conduct a frisk or strip search of an unruly inmate;" According to this policy the defendant's

could have used a firearm to make the plaintiff strip.

21. Nor, is OC pepper foams use the same as a control technique, as a matter of fact, OC is considered an additional use of force option and is not intended to replace a firearm, PR-24 baton, straight baton, expandable baton or any other authorized piece of equipment, nor, is it intended to replace defense and control techniques that are used within the levels of force. See exhibit "D-2; D-3; D-4; D-5" More recently, another district Court Judge in Washington State barred the use of pepper spray in a state juvenile facility. "[I]t should be used, he ruled, only if there is a threat of equal or grater harm to others or to a substantial amount of valuable property than the pain and danger of harm that the pepper spray presents. Pat Arthur, plaintiff's attorney in the case, emphasized a lack of training. If staff aren't trained in other intervention methods, they resort to pepper spray. Calling it a chemical weapon, she said, I have seen videotapes of kids who are being sprayed. The pain is so intense: the kid immediately falls to the floor, screaming. There is no question of an injury being suffered." See exhibit "E-1 thru 6" attached hereto.

22. The defendant's state that plaintiff's actions caused the interruption of their normal activities, and that their attack only produced transient discomfort; this is also untrue. See exhibit "F" attached hereto; This document is from the Gettysburg Hospitals emergency ward right after plaintiff was beat-up by the defendant's and it states that: "Patient states this afternoon he was beaten by the prison guards. He c/o (complains of) thorasic and lumbar back pain. He also complains of right rib pain and left thumb numbness. Abrasion noted over thorasic back. Tenderness over right ribs. Negative heart palpations," and plaintiff was given 2mg of Ativan, as a precaution or anticonvulsant.

23. In Brooks v. Kyler, 204 F.3d 102 (3rd Cir.2000), the Court reasoned that Hudson, primarily stands for the proposition that a showing of "significant" or "serious" injury is not necessary to make an Eighth Amendment claim. The Court further concluded that "Three correctional officers allegedly assaulted Brooks by repeatedly punching him in the head, stomping on his back and neck, slamming him into a wall, choking him unconscious--all while he was handcuffed to a waist restraint belt and, at some points, even restrained by leg shackles--simply because he did not promptly respond to an order...If a jury believes Brooks's version of the facts, there is no question that the defendant's use of force was excessive in light of the circumstances confronting them." Id. at, 107. Certainly, the defendant's in the case at bar, use of force exceeded the circumstances confronting; as they had a fully restrained, and passive inmate that did not need to be assaulted under the condition he was in.

24. The defendant Orth, states in his affidavit that an officer told him at 3:10am on August 30,1999, that the plaintiff was having some kind of problem; he was screaming and not responding to verbal directions; "At the time, inmate Benson appeared to be physically okay other than the fact that he was having difficulty following directions and answering questions." That is not a fact nor, the truth. The officer told defendant Orth, that the plaintiff was "found lying on the floor of his cell - he was bleeding a little from the mouth." Defendant Orth, goes on to state that approximately 20-25 minutes later, (3:30-3:35am) the plaintiff appeared to be having a seizure and began to scream and suffer what appeared to be convulsions. And that "an ambulance would have been called if this was an emergency. He did not get worse after the Sheriff's office was called. Instead, he got better and in fact...his condition had improved..." See (Defendant Orth's Affidavit at ¶¶ 4,9; and the Extraordinary Occurrence

Report attached thereto; and the Log documenting the Times).

25. However, defendant Orth's actions and comments in the extraordinary occurrence report, tell a different version; "inmate transported to the hospital because of the frequency of seizures and the fact that the seizures became more intense also because the inmate was unresponsive had trouble breathing and was vomitting some blood." The incident was stated to occurred at 3:10am but was only documented at 3:58am; which is 48 minutes later and the plaintiff left out of the prison with the sheriff's at 5:35am; that means that the plaintiff did not leave the prison until an 2:15 minutes after his first seizure and that's due to defendant Orth's professional certainty; that plaintiff's seizures were not an emergency. The plaintiff was having a "Status epilepticus, the most serious seizure disorder, the seizure doesn't stop. Status epilepticus is a medical emergency because the person has convulsions with intense muscle contractions, is unable to breathe properly, and has widespread(diffuse)electrical discharges in the brain. Without rapid treatment, the heart and brain can become over-taxed and permanently damaged, and the person can die." See Exhibits "G-1,2, 3;" attached hereto. Clearly, deliberate indifference is present.

26. The Adams County Prison defendant's are not entitled to nor, should they be granted qualified immunity. Plaintiff illuminates above that they did not follow their own policy and procedures. See also, Howard v. Adkison, 887 F.2d 134,140 (8th Cir.1989)(defendants who acted in violation of prison policies were not immune); Deorle v. Rutherford, 263 F.3d 1106 (9th Cir.2001). Accordingly, the Adams County Prison defendant's Motion for Summary Judgment should be denied respectively.

27. The plaintiff respectfully requests that this Honorable Court, look past the defendant Long's ruse about his "Professional Judgment" making him come to the conclusion that plaintiff should not be on Phenobarbitol for a long term and that plaintiff had been non-compliant [with] his medication. Defendant Long, also stated that it was not medically necessary to continue the plaintiff on Dilantin because, the plaintiff had effectively taken himself off of the anti-convulsive medication, and that everything was documented in plaintiff's medical documentation that he supplied to the Court. Counsel for defendant Long, seem to believe that the record is devoid of any evidence establishing that Long, exhibited deliberate indifference to [any] serious medical need to plaintiff with respect to the treatment provided at SCI-Smithfield. That is not the truth.

28. Had the plaintiff actually taken himself off of his anti-convulsive medication; defendant Long, would have ordered the plaintiff to sign a "Release from Responsibility for Medical Treatment." in that form it states: I understand the nature of the treatment is:(Attending physician: Give brief description of the medical treatment required, and the possible consequences of this inmate not receiving it.) By refusing this medication (Phenobarbitol), I understand that my condition may become much worse and lead to possible deterioration of my health; and possibly even death...I hereby release the attending physician, and the institution from all legal responsibility for any ill effects which may result from my refusal to accept medical treatment..." See Exhibit "H" attached hereto.

29. Not one of the defendant's/(collectively) are entitled to summary judgment in the favor for the reasons stated above. However, the plaintiff is entitled to "Expert Testimony" according to the Court in Parham supra. Defendant Long's, statement of material facts are objected to because, if what he states is true, he would've produced exhibit "H".

30. The plaintiff filed with the Court, a motion entitled Plaintiff's Statement of Disputed Factual issues and Brief in Opposition to Defendant's Request for Judgment in Their Favor; and plaintiff also filed an affidavit against or in support of the above titled pleading. The Adams County Prison Defendant's did not bother to response to either pleading. As far as their statement of material facts is concerned ¶¶ 1, thru 10, are agreed to in part; plaintiff objects to the allegation that he initially refused to strip and that he used such vulgar language; ¶ 10, is objected to. The plaintiff was restrained by his hand being cuffed behind him and his feet were shackled; ¶¶ 12 thru 23, are all lies. See the videotape and plaintiff's proof above; ¶¶ 23 28, are objected to see above; ¶¶ 30-38, are all lies, see above pleadings.

WHEREFORE, the plaintiff respectfully requests that all of the Defendant's Motions for Summary Judgment or Qualified Immunity be denied for the clearly disputable issue of material facts presented, and that this Honorable court review the videotape of August 27, 1999, as well as, appoint a Medical Expert for the plaintiff or so the Court can see that the truth is what the plaintiff' been pleading to the Court.

Respectfully submitted,



Mr. Jason Benson, Plaintiff

November 23, 2001

CERTIFICATE OF SERVICE

I, Jason E. Benson, plaintiff, hereby certify that a true and correct copy of the foregoing document was served upon the following via first class mail:

Jason Kantor, Esquire
Post & Schell, P.C.
240 Grandview Avenue
Camp Hill, PA 17011

Lavery, Faherty, Young & *
Patterson, P.C.
James D. Young, Esquire
301 Market St., Suite 800
Harrisburg, PA 17108

David L. Schwalm, Esquire *
Thomas, Thomas & Hafer
305 North Front Street
P.O.Box 999
Harrisburg, PA 17101

Alan Gold, Esquire *
7837 Old York Road
Elkins Park, PA 19027

Date:

By: 

Mr. Jason E. Benson, Plaintiff
SCI-Smithfield, #DS-6483
P.O.Box 999, 1120 Pike Street
Huntingdon, PA 16652

* The plaintiff must send the Defendant's attorney's copies when he can afford to, which will be the first week of December, 2001.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JASON BENSON, : CIVIL ACTION NO.1:CV-00-1229
Plaintiff :
v. : (Judge Caldwell)
 : (Magistrate Judge Elewitt)
THOMAS LUFAN, et al., :
Defendants : JURY TRIAL DEMANDED

REQUEST FOR PRODUCTION
OF DOCUMENTS RECEIVED
PURSUANT TO THE SUBPOENA

On September 5, 2001, the defendant Ronald Long, issued a subpoena to the records custodian here at SCI-Smithfield, and requested the following information:

"Any and all medical records and any and all documents pertaining to inmate grievances filed by inmate Jason Benson (DS-6483);


And that they receive them by September 20, 2001, at 9:00 a.m.."

The plaintiff respectfully requests a legible copy, front and back in some instances, of any and all of the medical records and the documentation pertaining to inmate grievances filed by plaintiff which includes (the requests to staff members).

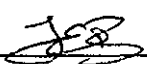

This request is pursuant to Fed.R.Civ.P. Rule 34, and is expected to be honored within (30) days.

Respectfully,

Date: 9/13/01


Jason Benson, Plaintiff
DS-6483, SCI-Smithfield
1120 Pike St., P.O.Box 999
Huntingdon, PA 16652

cc: David Schwalm, Esquire
Alan Gold, Esquire

Form DC-135A		Commonwealth of Pennsylvania Department of Corrections	
INMATE'S REQUEST TO STAFF MEMBER		INSTRUCTIONS Complete items number 1-8. If you follow instructions in preparing your request, it can be responded to more promptly and intelligently.	
1. To: (Name and Title of Officer) <u>MR Siegel</u> <u>RECORDS DEPT. / CUSTODIAN OF RECORDS</u>		2. Date: <u>9/25/01</u>	
3. By: (Print Inmate Name and Number) <u>JASON E. BENSON, DSC483</u>  Inmate Signature		4. Counselor's Name <u>CRIDER</u>	
6. Work Assignment _____		5. Unit Manager's Name <u>BURK</u>	
		7. Housing Assignment <u>CA/08</u>	
8. Subject: State your request completely but briefly. Give details. <u>Mr. Siegel,</u> <u>Did you, pursuant to a Notice of Records deposition, take to</u> <u>the law offices of Lavery, Faherty, Young & Patterson, P.C. in Harrisburg, PA.</u> <u>any and all records described on a subpoena? Or did you by mail, send</u> <u>any and all records to the above law office, along with a signed</u> <u>affidavit in lieu of appearing in person to a deposition?</u> <u>(Note: The records spoke about above are pertaining to Jason Benson, #DSC483)</u> <u>Thank you kindly for your attention to this matter.</u> 			
9. Response: (This Section for Staff Response Only) <u>Yes</u>			
To DC-14 CAR only <input type="checkbox"/>		To DC-14 CAR and DC-15 IRS <input type="checkbox"/>	

Staff Member Name

Print

Sign

Date

9-26-01

repeat #3

DC-804
Part 1

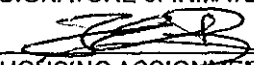
Leggett/Counts

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF CORRECTIONS
P.O. BOX 598
CAMP HILL, PA 17001-0598

FOR OFFICIAL USE ONLY

5mi-7736-01
GRIEVANCE NUMBER

OFFICIAL INMATE GRIEVANCE

TO: FACILITY GRIEVANCE COORDINATOR	FACILITY: S.C.I.S.	DATE: OCT. 5, 2001
FROM: (INMATE NAME & NUMBER) JASON BENSON, DSC483	SIGNATURE of INMATE: 	
WORK ASSIGNMENT: _____	HOUSING ASSIGNMENT: CA/108	

INSTRUCTIONS:

1. Refer to the DC-ADM 804 for procedures on the inmate grievance system.
2. State your grievance in Block A in a brief and understandable manner.
3. List in Block B the specific actions you have taken to resolve this matter informally. Be sure to include the identity of staff members you have contacted.

A. Provide a brief, clear statement of your grievance. Additional paper may be used, maximum two pages.

ON OCTOBER 5th, 2001, I RECEIVED A U.S. DISTRICT COURT SUBPOENA ADDRESSED TO THE CUSTODIAN OF RECORDS OF THIS FACILITY. THIS SUBPOENA IS FOR MY "COMPLETE PRISON FILE" (I.E. MEDICAL RECORDS, DISCIPLINARY RECORDS, ETC.) PLEASE BE ADVISED: UNDER D.O.C. POLICY DC-ADM 003 (RELEASE OF INFORMATION POLICY), YOU ARE REQUIRED TO HAVE A DC-108 "AUTHORIZATION FOR RELEASE OF INFORMATION", SIGNED BY MY SELF, TO RELEASE ANY INFORMATION OF THIS NATURE TO ANY OUTSIDE PARTY. I DO NOT CONSENT FOR ANY OF THIS INFORMATION TO BE RELEASED TO ANY BODY. SHOULD THIS INFORMATION BE RELEASED OUTSIDE OF THE ESTABLISHED D.O.C. PARAMETERS SET FORTH IN DC-ADM 003, I WILL BE FORCED TO CONSTRUCT SUCH ACTIONS AS DELIBERATE AND WILLFUL VIOLATIONS OF MY CONSTITUTIONAL RIGHTS, AND WILL PURSUE THEM AS SUCH IN THE APPROPRIATE JUDICIAL VENUE. PLEASE TAKE INTO CONSIDERATION PARAGRAPHS FIVE, SEVEN AND EIGHT OF THE D.C 108 FORM. I WILL NOT AND DO NOT ENDORSE THESE DISCLAIMERS, AGAINST ADAMS COUNTY PRISON, DEFENDANTS, THE D.O.C., AND THE RECORDS CUSTODIAN - S.C.I.S.

B. List actions taken and staff you have contacted, before submitting this grievance. Attach the copy of the DC-135A with the staff member's response of your informal resolution attempt.

THIS ISSUE HAS ALSO BEEN FORWARDED TO THE S.C.I.S. CUSTODIAN OF RECORDS, AS WELL AS THE CLERK OF COURTS. IT IS APPARENT THAT THE DEFENDANTS ARE RECEIVING MY RECORDS, BUT I DO NOT KNOW IF THEY ARE TRUE AND ACCURATE COPIES, AS I HAVE NOT SEEN THEM.

Your grievance has been received and will be processed in accordance with DC-ADM 804.



Signature of Facility Grievance Coordinator

11/16/01

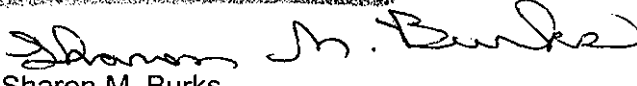
Date

DC-ADM 804, Inmate Grievance System
DC-804
Part 3

Attachment C
COMMONWEALTH OF PENNSYLVANIA
Department of Corrections

DATE: November 16, 2001
SUBJECT: Grievance Rejection Form
TO: J. Benson DS6483 C/A/8

For Official Use Only
SMI-7736-01
Grievance Number

FROM: 
Sharon M. Burks
Facility Grievance Coordinator

The attached grievance is being returned to you because you have failed to comply with the provision(s) of DC-ADM 804, Inmate Grievance System:

1. Grievances related to the following issues shall be handled according to procedures specified in the policies listed and shall not be reviewed by the Facility Grievance Coordinator.
 - a. DC-ADM 801 – Inmate Disciplinary and Restricted Housing Unit Procedures.
 - b. DC-ADM 802 – Administrative Custody Procedures.
 - c. Other policies not applicable to DC-ADM 804.
2. Block B must be completed, as per the Instruction of #3 of the Official Inmate Grievance Form.
3. X The grievance does not indicate that you were personally affected by a Department or facility action or policy.
4. Group grievances are prohibited.
5. The grievance was not signed and/or dated.
6. Grievances must be legible and presented in a courteous manner.
7. The grievance exceeded the two (2) page limit. Descriptions need to be brief.
8. Grievances based upon different events shall be presented separately.....
9. The grievance was not submitted within fifteen (15) working days after the events upon which claims are based.
10. You are currently under grievance restriction. You may not file any grievance until
11. Grievance involves matter(s) that occurred at another facility and should be directed by the inmate to the appropriate facility.
12. The issue(s) presented on the attached grievance has been reviewed and addressed previously.

Cc: Major Norris
DC-15
File

B-2

ADAMS COUNTY PRISON
POLICY AND PROCEDURE MANUAL

Policy and Procedure: 300-6
Subject: Use of Force

Approved by:

Effective Date: June 24, 1998

POLICY: The responsibility of personnel engaged in security duties normally extends to the protection of persons and property, to the apprehension of individuals believed to have committed felonious offenses, such as escape, and to the security and custody of prisoners. Persons engaged in security activities will avoid the use of force where the assigned responsibilities can be discharged without force. If security responsibilities cannot be discharged without resorting to force, personnel shall use the minimum amount of force necessary to discharge their assigned responsibilities.

I. USE OF DEADLY FORCE:

A. Definition and Restrictions:

Deadly force is that force which a person uses with the purpose of causing--or which he/she knows, or should know, would create a substantial risk of causing--death or serious bodily harm. Its use is justified only under conditions of extreme necessity as a last resort, when all lesser means have failed or cannot reasonably be employed. Deadly force is only used under one or more of the following circumstances:

1. Self Defense:

When deadly force reasonably appears necessary to protect personnel who reasonably believe themselves to be in imminent danger of death or serious bodily harm, the application of deadly force is justified.

2. Serious Offenses Against Persons:

When deadly force reasonably appears necessary to prevent the commission of an offense involving physical violence, in which a person (staff, visitor, inmate, etc.) is in imminent danger of death or serious bodily harm.

3. Escape:

The use of deadly force in escape situations is limited to the same "self-defense" and "serious offenses against persons" situations above. Deadly force may be utilized only if there is reasonable cause to believe that the escapee is likely to commit a crime involving inflic-

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tion of serious bodily harm upon Correctional Officers or others unless immediately apprehended. In escape situations where there is no reasonable cause to believe the escapee poses a threat of serious physical harm to either Correctional Officers or others, deadly force will not be used. However, if the escapee threatens an officer with a dangerous weapon or there is probable cause to believe the escapee will commit a crime involving the infliction of threatened infliction of serious physical harm, deadly force may be used if necessary to prevent an escape. Deadly force is justified to prevent an escape where the Correctional Officer, who is considering the employment of that level of force, is aware of one or more of the following facts and the escapee has cleared the last line of security:

- a. The escapee has threatened a Correctional Officer with a dangerous weapon during the escape.
- b. The escapee is armed and considered dangerous or is assisted from outside the perimeter by armed accomplices;
- c. The escapee has threatened to commit violent acts (such as the taking of hostages or the extraction of revenge upon informants or witnesses) ~~once he/she has effected his/her~~ escape;
- d. The escapee has employed exceptional force to penetrate security barriers, such as the use of explosives;
- e. The escapee is incarcerated following conviction for an offense involving the infliction or threatened infliction of serious physical harm to another person (limited to the offenses of homicide, armed robbery, rape, and aggravated assault with a deadly weapon);
- f. The escapee has not yet been convicted, but there is probable cause to believe that the escapee has committed a crime involving the infliction or threatened infliction of such serious physical harm to another person;
- g. The escapee has committed a crime within the prison involving the infliction of serious bodily harm upon another person;
- h. The attempt involves the simultaneous escape of numerous inmates who are believed to pose a heightened degree of danger to the public if acting in concert; or

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- i. The escape is attempted during or in conjunction with a riot, general disturbance, or potential mass breakout, such that the necessity to maintain control and discipline over large numbers of inmates requires the selective application of deadly force to prevent escape.

B. Use of Firearms:

If, in any of the circumstances set forth in Section I-A of this Policy and Procedure, it becomes necessary to use a firearm, the following guidelines must be observed:

1. An order to halt will be given before a shot is fired.
2. Shots will not be fired if they are likely to endanger the safety of innocent bystanders.
3. Shots will be aimed to disable. However, if circumstances render it difficult to direct fire with sufficient precision to assure that the person is disabled rather than killed, such circumstances do not preclude the use of a firearm, provided such use is otherwise authorized by this Policy and Procedure.
4. Warning shots are not fired under any circumstances.
5. Firearms are only used by authorized personnel outside the secure area of the prison or on the roof.
6. Only firearms issued by and authorized by the prison are used by staff.

C. Instruction:

1. No individual is permitted to perform security duties until he/she has received instruction on the applicable regulations relating to the use of force in the performance of such duties. In addition, instruction is given periodically to all personnel assigned to these duties to ensure their familiarity with all restrictions on the use of force.
2. The Deputy Warden is hereby charged with the enforcement of appropriate regulations governing the use of prison weapons. These regulations encompass the cleanliness, use and safety aspects of these weapons.

D. Procedure to be followed when firearm is discharged:

All personnel shall, except while engaging in target practice, submit a written report to the Warden on all intended or accidental discharges of a departmental firearm.

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E. Summary:

The policies contained herein have been formulated to assist prison personnel in determining whether or not to use deadly force. It is the policy of the prison that all personnel will resort to whatever means are necessary to protect themselves, their fellow officers, and inmates from attack where it is obvious that serious injury and/or death could result. However, it is also prison policy that personnel will exhaust every other reasonable means before resorting to the use of deadly force.

II. USE OF PHYSICAL FORCE:A. Restrictions:

Only the minimal amount of force necessary is used to control an inmate or situation in the prison.
The use of force for inmate control is limited to the following conditions:

I. A. 1, 2, B-E
I. A. 3, B-E

1. In self-defense and/or to prevent an assault;
2. To prevent escape;
3. To prevent destruction of property;
4. To prevent commission of a felony;
5. To restrain a physically violent inmate;
6. To restrain an intoxicated inmate;
7. To move an inmate who refuses to cooperate;
8. To conduct a "frisk" or strip search of an unruly inmate; and
9. To prevent an inmate from self-injury.

B. Procedures:

The following guidelines must be strictly followed whenever it becomes necessary to use physical force on an inmate:

1. Except in cases of extreme emergency, ONLY the Shift Commander/Administrator will authorize the use of physical force to either move or restrain an unruly or uncooperative inmate. Whenever an officer believes that the use of physical force may be necessary, he/she must immediately contact the Shift Commander/Administrator.
2. Upon notification that the use of force may be necessary, the Shift Commander/Administrator immediately responds to the area. Once at the scene, he/she makes certain that sufficient manpower, adequate security, and restraint equipment are available. In addition, the Shift Commander/Administrator instructs the officers present and then personally directs their efforts. The Shift Commander/Administrator does not get physically involved in the incident unless absolutely necessary. The Shift Commander/Administrator also designates an

According to these, the defendant's could have used Deadly Force.

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observer to videotape the incident especially when several officers are involved and use of force can reasonably be expected. At no time, with the exception of an extreme emergency, is force used without officers first being properly briefed on how to handle the situation with minimal chance for injury.

3. Physical force is used only after all other means to handle the situation have been exhausted. When at all possible, inmates should be persuaded to carry out instructions. Often times the show of sufficient manpower in itself is enough to persuade an individual to comply with given orders and instructions.
4. In any situation where physical force is used, the Shift Commander/Administrator makes certain that the incident is properly documented. Each officer who is involved in the incident must submit a written report detailing both why the use of force was necessary and the amount of force that was used to accomplish the assigned task. The officer's written report must be submitted before the end of his/her tour of duty.
5. The Shift Commander/Administrator conducts an investigation of the incident to determine whether proper procedures were followed in using physical force according to existing policies and procedures. This investigation is included as part of the original report and forwarded to the Deputy Warden for review.
- B. 6. In the event that an officer is injured while using physical force on an inmate, the Shift Commander/Administrator must investigate the extent of this injury and then complete an "Employer's First Report of Injury".
7. Whenever an inmate is injured in an incident where physical force is used, the Shift Commander/Administrator makes certain that the inmate is seen by the Medical Department to receive appropriate medical attention.
8. Whenever physical force is used, the inmate(s) involved must be placed in an Administrative Segregation status pending an investigation of the incident and given notice thereof.
9. The Duty Officer is notified of any incident in which physical force is used on an inmate.
10. The use of force should be applied in accordance with the established force continuum unless the

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Shift Commander/Administrator reasonably believes the situation requires immediate escalation to a greater degree of force to accomplish any of the objectives identified in this policy.

The following options constitute the Force continuum, beginning with the least amount of force that can be reasonably expected to control the inmate or the situation:

- a. Show of Force
- b. Control techniques*
- c. Oleoresin Capsicum Aerosol*
- d. Electronic Body Immobilizing Device (E.B.I.D.)*
- e. Active counter measures (strikes against the inmate)
- f. Chemical munitions other than oleoresin capsicum
- g. Firearms

*These options are equivalent methods of control, subject to availability under the circumstances.

III.

USE OF RESTRAINT EQUIPMENT:

- A. Whenever an inmate becomes disruptive and/or unruly and needs to be restrained, the Shift Commander/Administrator is immediately notified. Except in extreme emergencies, only the Shift Commander/Administrator or higher authority may authorize the use of restraining equipment for the following circumstances:
 1. As a precaution against escape during transfer;
 2. To move an unruly and/or uncooperative inmate.
 3. To prevent injury to others or property damage by an inmate.
- B. The Medical Director or designee may authorize the use of restraining equipment on an inmate for medical reasons (e.g., to prevent self-injury, etc.)
The correctional staff will assist and comply with the medical order whenever restraint equipment is used for medical reasons.
- C. Restraining equipment will not be used as a form of punishment against an inmate nor will an inmate be left in restraints for more time than is absolutely necessary. At the discretion of the Shift Commander/Administrator, all restraint equipment is removed when it is felt that the inmate no longer poses a threat or danger to him/herself or others.
- D. Whenever possible an inmate is restrained with leather restraint devices to prevent injury. This is particularly necessary when handling a mentally

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disturbed individual.

- E. Any inmate placed in restraints must be seen by Medical personnel as soon as reasonably possible to determine if the inmate has suffered any injury while he/she was being subdued. This action is documented in the inmate's medical file.
- F. Inmates left in restraints are observed by an officer at least once every fifteen (15) minutes and seen by Medical staff daily. A Chronological History Form is used to record these observations.
- G. Medical guidelines regarding the application of restraint equipment include the following:
 - 1. As a general rule, the inmate's head should never be restrained. No binding should be anchored to the neck, nor should any form of mouth gag be used. A helmet may be used to prevent injury from persistent head banging.
 - 2. Whenever security considerations permit, the inmate's hands should be restrained in front of the body rather than behind.
 - 3. An inmate should never be restrained on his/her back to the point that he/she cannot turn. Restraining the inmate face down or while on the side are preferable alternatives.
 - 4. Individuals in restraints should be offered liquids each hour. If security permits, at least some of the restraints should be removed so that the inmate may take nourishment.
 - 5. No inmate should be restrained for more than 2 hours without changing positions.
 - 6. The inmate's level of consciousness and circulation of restrained extremities should be monitored.
 - 7. No inmate should ever be denied nourishment or prescribed medications as part of the restraint process. Inmates should also be allowed to use toilet facilities as needed.
 - 8. In most cases, the duration of the restraint process should not exceed 48 hours. Exceptions to this should be fully documented by both security and Medical personnel.
- I. The Shift Commander/Administrator and all officers involved are responsible for forwarding reports to the Deputy Warden on any incident in which restraint equipment is used on an inmate.

IV.

USE OF CHEMICAL AGENTS:

- A. The Shift Commander/Administrator limits the use of force against an inmate to that necessary to insure security and control. Only the Shift Commander/Administrator or higher ranking correctional

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authority can authorize the issuance and use of chemical agents to control or break up assaultive actions by inmates.

- B. A chemical agent is used when, in the judgment of the Shift Commander/Administrator, its use is in the best interest of the inmates and Correctional Officers, i.e., minimizing the necessity for physical force. It is not to be used against inmates offering only passive resistance. Chemical agents are not sprayed at close range (2 to 3 feet) directly into a person's eyes. The inmate is given the opportunity to wash the spray off as soon as he/she is under control.
- C. After an inmate is sprayed with a chemical agent, he/she will be seen by Medical personnel for evaluation. Hospital treatment is to be made available if complaints of adverse chemical reaction persist.
- D. Chemical agents are available in the Control Center for use in case of emergency. Whenever a chemical agent is used, a log entry is made and a written report is submitted by the Shift Commander/Administrator. This report details why he/she ordered its use, who ordered its use, who it was used against, the name of the officer that was ordered to use it, distance it was sprayed from, area of inmate's body sprayed, and when it was washed off by the inmate. Only authorized chemical agents are used by staff.

WHEN TO USE

Use of Force

Oleoresin Capsicum may be introduced into the Use of Force much earlier than CS or CN gases, which may cause temporary or permanent injury. The Levels of Force is a concept designed to interpret the use of force by officers. Before officers can understand where OC fits into their arsenal of defensive tools, they must have an understanding of the Levels of Force.

Understanding the importance of after-care for subjects who have been subdued with batons, chemical agents, OC aerosols, approved stunning techniques, or electronic stun guns may be as important as the initial use of these weapons.

Force Options

Sometimes we put too much emphasis on how to apply force and not enough training into when to apply force. Any policies established should be brief, concise and straight forward. Under stress, a policy must be easily recalled by the officer.

Note: OC is considered an additional use of force option and is not intended to replace a firearm, PR-24 baton, straight baton, expandable baton or any other authorized piece of equipment, nor is it intended to replace defense and control techniques that are used within the levels of force.

RECOGNIZING THE THREAT

Generally attacks are prefaced by signals of aggression and ritualized combat. Although assault generally does not happen during this period, assault is possible. When threats and counter threats have failed to settle a dispute then physical action takes place.

Listed below are some early behavior warning signals (ritual combat). Assault is usually not imminent, but is possible.

EARLY BEHAVIOR SIGNALS (Assault is Possible)

- Head back - shoulders back and squared to you
- Face turns red on light skin individuals
- Lips pushed forward bearing the teeth
- Excessive salivation such as spitting
- Breathing is quicker and deeper
- Sweating
- Looking through you stare, eyes glazed, or empty stare
- Direct, uninterrupted eye contact
- Belligerent, challenging, yelling, cursing, etc.
- Exaggerated movements - pacing, turning, pointing, fist threatening with arm bent and held sideways, hands on hips
- Standing as tall as possible
- Redirects activity because the aggressor stimulating the attack is too frightened to directly assault the officer. Aggression is released on less intimidating objects, such as bystanders or objects (i.e. kick a chair)

A common misconception is that an officer must be assaulted before use of an aerosol is justified. If the officer can show through "experience and training" that an assault was imminent then the use of "OC" is justified. Listed below are some signals indicating an imminent physical assault. The more signals observed by the officer, the greater the threat.

ASSAULT IS IMMINENT (Signals)

- Face goes from red to white
- Lips tighten over the teeth
- Breathing is rapid and deep
- Stance changes - bladed position, shifts forward or back
- Verbalization - stops

INSTRUCTIONS

WARNING - FOR LAW ENFORCEMENT AND CORRECTIONS USE ONLY.

CAUTION: STRONG IRRITANT - CONTENTS UNDER PRESSURE

AEROSOL IRRITANT PROJECTORS ARE WEAPONS. CONTENTS MAY CAUSE SEVERE INJURY UNLESS USED IN ACCORDANCE WITH THESE INSTRUCTIONS. ALTHOUGH WHEN PROPERLY USED, IT IS LESS LIKELY TO CAUSE INJURY THAN CONVENTIONAL WEAPONS, IT SHOULD BE USED ONLY IN SITUATIONS WHERE A WEAPON IS JUSTIFIED AND NECESSARY. KEEP OUT OF REACH OF CHILDREN.

1. AEROSOL IRRITANT PROJECTORS MUST ALWAYS BE USED IN AN UPRIGHT POSITION. USE IN SHORT ONE SECOND BURSTS.
2. NEVER DISCHARGE UNIT INTO WIND.
3. NEVER USE IN CONFINED AREAS. USE ONLY WITH ADEQUATE AIR SUPPLY.
4. FOR BALLISTIC STREAM (NON-FOGGING) UNITS, THE SPRAY SHOULD BE DIRECTED TO THE EYES, NOSE AND MOUTH. FOR FOGGING UNITS, THE SPRAY SHOULD BE DIRECTED AT THE FACIAL AREA FROM A DISTANCE OF NOT LESS THAN 15 FEET.
5. EXTREME CAUTION MUST BE EXERCISED IN DANGEROUS SITUATIONS WHERE OFFICER IS UNDER ATTACK OR THREAT OF ATTACK WITH FIREARMS, KNIVES, FISTS, OR OTHER MEANS OF VIOLENCE. IN SUCH SITUATIONS THE AEROSOL IRRITANT PROJECTOR MAY NOT STOP THE ATTACK OR THREAT OF ATTACK AND THE OFFICER IS CAUTIONED TO USE OTHER AVAILABLE WEAPONS OR RETREAT TO A POINT OF SAFETY.
6. EXTREME CAUTION SHOULD BE EXERCISED WHEN USING AN AEROSOL IRRITANT PROJECTOR AGAINST PERSONS WHO HAVE REDUCED SENSITIVITY TO PAIN. IF SUCH PERSONS ARE NOT DISABLED WITH AN AEROSOL IRRITANT PROJECTOR, THEY MAY REACT WITH VIOLENCE.
7. OFFICERS SHOULD ROUTINELY PRACTICE USE AND HANDLING OF THE AEROSOL IRRITANT PROJECTOR TO DEVELOP PROFICIENCY IN ITS USE IN ORDER TO PREPARE FOR CIRCUMSTANCES WHICH ARE DANGEROUS OR WHICH REQUIRE RAPID HANDLING AND USE OF THE AEROSOL IRRITANT PROJECTOR. OFFICERS SHOULD ROUTINELY TEST FIRE THEIR AEROSOL IRRITANT PROJECTOR EVERY 3 MONTHS (OUTDOORS IN AN APPROPRIATE AND SAFE AREA) TO CHECK PRESSURIZATION AND SPRAY PATTERN.
8. THIS AEROSOL IRRITANT PROJECTOR IS NOT INTENDED FOR AND SHOULD NOT BE USED BY CIVILIANS. CIVILIANS ARE WARNED THAT POSSESSION AND/OR USE BY UNAUTHORIZED PERSONS IS PROHIBITED OR REGULATED BY LAW IN MANY JURISDICTIONS.
9. SPECIAL CARE SHOULD BE USED IN HANDLING AND CARRYING AN AEROSOL IRRITANT PROJECTOR TO AVOID RELEASING THE FORMULATION FROM THE CANISTER. SHOULD THE FORMULATION BE INADVERTENTLY RELEASED FROM THE CANISTER, FIRST AID PRECAUTIONS SHOULD BE FOLLOWED IMMEDIATELY IN FULL DETAIL.

FIRST AID

1. REMOVE CONTACT LENSES AND CONTAMINATED CLOTHING.
2. FLUSH CONTAMINATED AREAS WITH LARGE QUANTITIES OF COOL WATER OR DILUTED BAKING SODA SOLUTION AND EXPOSE TO FRESH AIR AS SOON AS POSSIBLE AFTER ARREST IS EFFECTED. CAUTION: FAILURE TO FOLLOW THIS INSTRUCTION MAY RESULT IN SEVERE SKIN IRRITATION, SKIN DEPIGMENTATION OR OTHER SKIN INJURY.
3. DO NOT APPLY SALVES, CREAMS, OILS OR LOTIONS WHICH CAN TRAP THE IRRITANT AGENT CAUSING SKIN BLISTERS.
4. SEE PHYSICIAN IF IRRITATION PERSISTS.

CARE AND MAINTENANCE

THE USE OF INERT PLASTICS AND NON-CORROSIVE METALS MAKES MAINTENANCE, OTHER THAN THE OCCASIONAL BLOWING AWAY OF DUST OR LINT, UNNECESSARY.

IMPORTANT: NEVER TAMPER WITH OR REMOVE THE ACTUATOR.

DO NOT PUNCTURE CARTRIDGE OR PLACE WHERE TEMPERATURE MAY EXCEED 120°F.; CONTENTS UNDER PRESSURE.

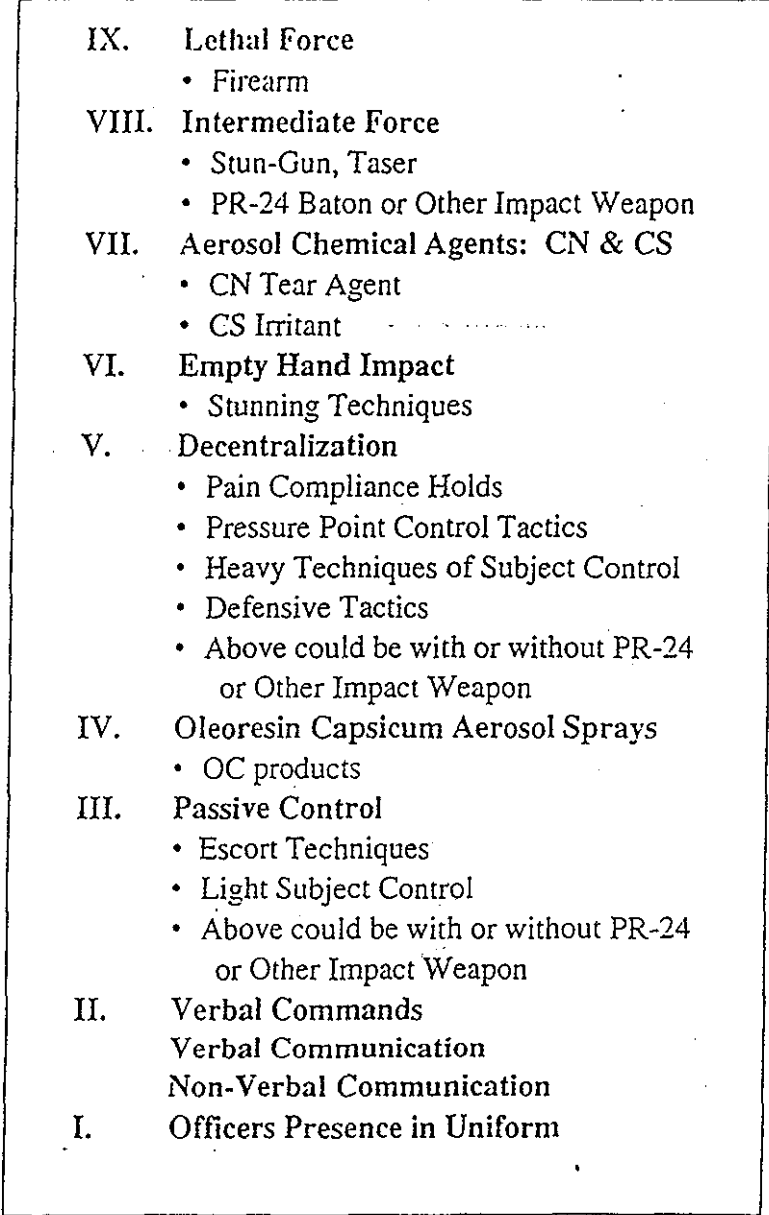
THE SHELF LIFE IS FOUR YEARS FROM THE DATE OF MANUFACTURE.

Federal Laboratories Inc.
An Armor Holdings, Inc. Company
MADE IN U.S.A. 1855 S. Loop, Casper, WY 82601

F105086

USE OF FORCE

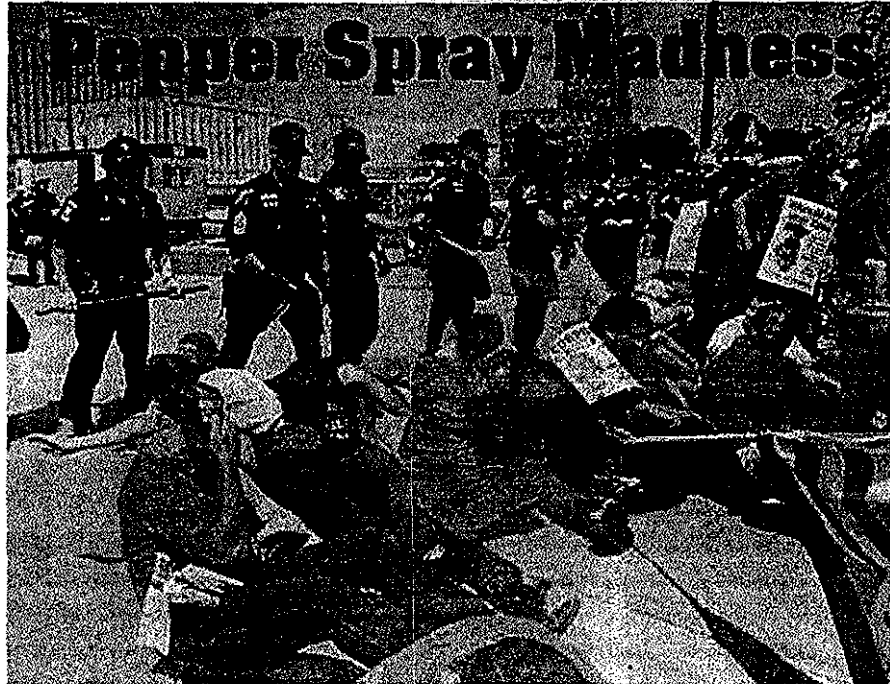
Use of Force generally holds the following options:

- 
- IX. Lethal Force**
 - Firearm
 - VIII. Intermediate Force**
 - Stun-Gun, Taser
 - PR-24 Baton or Other Impact Weapon
 - VII. Aerosol Chemical Agents: CN & CS**
 - CN Tear Agent
 - CS Irritant
 - VI. Empty Hand Impact**
 - Stunning Techniques
 - V. Decentralization**
 - Pain Compliance Holds
 - Pressure Point Control Tactics
 - Heavy Techniques of Subject Control
 - Defensive Tactics
 - Above could be with or without PR-24 or Other Impact Weapon
 - IV. Oleoresin Capsicum Aerosol Sprays**
 - OC products
 - III. Passive Control**
 - Escort Techniques
 - Light Subject Control
 - Above could be with or without PR-24 or Other Impact Weapon
 - II. Verbal Commands**
 - Verbal Communication
 - Non-Verbal Communication
 - I. Officers Presence in Uniform**

(Figure 1)

Covert Action

Q U A R T E R L Y



by
Lynne Wilson

Involved in at least US deaths,pepperspray can be used to punish "unruly" criminal suspects, mete out street justice, and quell civil unrest. Above, locked out Staley Co. workers are targeted.

Involved in at least 60 US deaths, pepper spray can be used to punish unruly criminal suspects, mete out street justice, and quell civil unrest.

Above, locked out Staley Co. workers are targeted. Imagine that someone has sprayed a substance 600 times hotter than cayenne pepper into your face, eyes and nostrils. Imagine that while this is happening, your hands are cuffed behind your back. Or you have asthma or bronchitis. Or a heart condition. Or you're drunk or just plain upset. Chances are, the pain will be intense, breathing will become difficult, your eyes will swell into blindness, you will become disoriented and fall to the ground. Fear and panic will set in. If you are unlucky enough to be in an altercation with the police and you are in restraints on your stomach, you may die. Last summer, Javier Trejo didn't have to imagine. After his wife, Maria, called police to report that he was drunk and abusive, Orange County,

California, sheriff's deputies subdued him with pepper gas and threw him in a holding cell. About an hour later, he was pronounced dead. I asked the police for help, cried Maria. I didn't say kill him. Trejo became one of the 60 in-custody deaths since 1990 in which pepper spray was a contributing factor.

Derived from the cayenne pepper plant, oleoresin capicum (OC) or pepper spray, was officially introduced into the US in the 1980s by the Postal Service as a dog repellent. In 1987, claiming that it produced no long-term health risks, the FBI adopted it as an official chemical agent. Ever since, in liquid and foam form, OC has gained popularity among police searching for a non-lethal method of subduing people in street encounters. They claim that it avoids the major drawbacks of other chemical agents: It doesn't blow back on those using it and can be washed off with relative ease. It has the further advantage of not leaving the kinds of injuries that generate brutality complaints.

Echoing advertising by the 200 pepper spray manufacturers, police managers also report that it is 95 percent effective in stopping suspects almost immediately compared to tear gas or Mace at 60 percent.

The International Association of Chiefs of Police asserts not only that OC is better on violent, intoxicated/drugged and mentally ill individuals, but also that it has not caused any deaths, even among persons with pre-existing conditions. With this kind of propaganda, it is no surprise that pepper spray has replaced and surpassed police use of Mace on the streets. Virtually every state authorizes it.

CRIME OF PUNISHMENT

While there is no question that pepper spray aerosol is less lethal than a gun and that when used correctly, it causes considerably less physical injury than a baton or an attack dog,

it is neither as effective nor as benign as claimed. According to Andrea Pritchett of Copwatch, a citizens group in Berkeley, California, It's used in addition to other forms of force such as guns, batons and mechanical restraints, not in their place. ...

And when you add it to other force methods, pepper spray tends to make a person actually more difficult to control. Nor, she claims, is it likely to reduce excessive force lawsuits against police, since many of California's 28 in-custody deaths involving OC have resulted in wrongful death suits.

As for its being benign, the pain, which can last up to 45 minutes, is so intense that the National Coalition on Police Accountability (N-COPA) has called for monitoring pepper spray as a form of torture as defined by the United Nations Convention on Torture and Other Cruel, Inhuman and Degrading Treatment signed by the US last year.

**The pain from pepper spray,
which can last up to 45 minutes,
is so intense it has been called
a form of torture.**

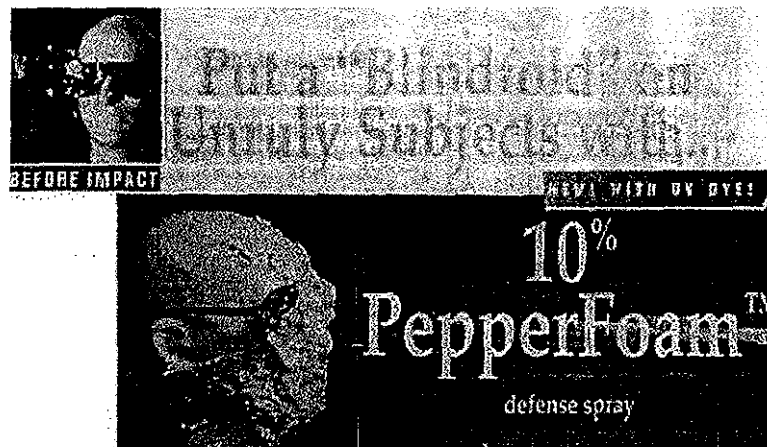
After police chiefs in Britain and Australia tried to add OC to their arsenals, activists argued that it would violate the Chemical Weapons Convention. They cited instances in Israel and Guatemala, as well as in the US, where OC is used not only to control civil unrest and subdue dangerous suspects, but to mete out extrajudicial punishment as a kind of street justice. In a Washington state case, a young black man who had mouthed off to the cops was pepper sprayed after being handcuffed. He was then left in a patrol car with the heat on high for half an hour.

The ACLU has raised additional concerns that the number of deaths in which OC has been a

contributing factor may be much higher than the 60 so far documented.

For example, although none of the autopsy reports for 26 post-spray deaths studied by its Southern California branch listed pepper spray as a cause of death, the group concluded that documents recovered ... establish that [California] state scientists have warned for more than two years that so little is known about residual effects of pepper spray that medical examiners may not know what to look for during an autopsy.

It was only in July 1993 that a North Carolina coroner issued the first US autopsy report directly connecting pepper spray to an in-custody death.



It noted that Angelo Robinson, a 24-year-old black parolee stopped for disorderly conduct, had bronchitis at the time of his death.

Officers reportedly sprayed Robinson 10-15 times and then placed him in a prone position on the ground while he was handcuffed, a position that has been known to cause death from positional asphyxia, in which the weight of

the body compresses the chest and causes respiratory failure.

As the danger becomes better known, more medical researchers are recognizing OC-related deaths and reporting an alarming nationwide increase: from two in 1992 to 26 in 1993. In addition to better documentation, these figures indicate the exponential increase in pepper spray use by law enforcement agents.

In one particularly gruesome incident reported by the National Institute of Justice, police sprayed a youth with so much pepper spray that his clothes were soaked. When he was later shot with an electric stun gun by police, his clothing caught on fire.

PEPPERING PRISONS

If misuse is a problem on the street, it is a disaster in US prisons. The Department of Justice (DoJ) and every federal court that has looked at its use in correctional facilities has found abuses. This fall, after more than 100 inmates rioted at the privately-run West Tennessee Detention Facility, prison guards pumped pepper gas into two dormitories seized by the prisoners.

In late 1994, the DoJ Civil Rights Division investigated a county jail in Syracuse, New York, and reported an unacceptably high and improper use of pepper spray...

Nearly every inmate interviewed told ... of excessive and improper use ... particularly when inmates are not resistant and after the inmate has been restrained and presents no danger.

One suicidal inmate in Syracuse was restrained with three cans of pepper spray. The prisoner reportedly died shortly afterward from positional asphyxia.

More recently, a federal district court judge in Washington State barred the use of pepper spray in a state juvenile facility. [I]t should be used, he ruled, only if there is a threat of equal or greater harm to others or to a substantial amount of valuable property than the pain and danger of harm that the pepper spray presents. Pat Arthur, plaintiffs' attorney in the case, emphasized a lack of training: If staff aren't trained in other intervention methods, they resort to pepper spray. Calling it a chemical weapon, she said, I have seen videotapes of kids who are being sprayed. The pain is so intense:

Police soaked his clothes with

**so much pepper spray that when
they shot him with an electric stun gun,
his clothing caught on fire.**

the kid immediately falls to the floor, screaming. There is no question of an injury being suffered.

WEAPON OF CHOICE

Local community groups, outraged by the startling increase in pepper spray use, are now calling for accountability. Copwatch demanded an outright ban after 37-year-old Aaron Williams, arrested for disorderly conduct, died after being beaten, kicked, and repeatedly pepper-sprayed by San Francisco police officers, probably while in a handcuffed, horizontal position.

Following that incident, police commanders conceded that officers had violated official policy against transporting handcuffed prisoners lying face down (raising the danger of positional asphyxia) and had disregarded the warning to pay special attention to suspects acting in bizarre ways. In this, as in other cases, regulations even when they exist are often ignored by cops who see pepper spray as a very low level use of force, well below the baton.

According to Allan Parachini of the ACLU, which helped draft the San Francisco policy,

Williams died because of a failure of procedure. ... Pepper spray never alone causes death but when it is combined with other restraints, there is a definite risk of fatality. [It] can be a valuable tool in many different situations.

The challenge is to set clear standards regarding how to use it, in what circumstances. ... [I]t doesn't serve anyone's purposes ... when it is used on people in psychiatric distress or on drugs. When used on these people and combined with a hogtie restraint, you are just asking for a fatality.

Regardless of injuries and even death resulting from its use, there is not a single federal agency currently responsible for regulation.

Because pepper spray is probably not a food or a drug within the meaning of FDA legislation, the Consumer Product Safety Commission may be the only federal agency with authority in this field.

As manufacturers increase their efforts to push the use of pepper spray in prisons, to disperse crowds, and to facilitate cell extraction, federal regulation is needed now more than ever. But given the current state of the federal budget, such regulation is unlikely.

Equally unlikely is that police will voluntarily restrict use. Pepper spray, despite the risk of death, and precisely because of the instant punishment and torture it inflicts, is a weapon of choice.

Emergency Department Initial Assessment

ORIGINAL

of Seizures Vary by Site

Symptoms

- Twitches in a specific muscle
- Hallucinations of flashes of light
- Numbness or tingling in a specific body part
- Hallucinations of images and complicated repetitive behavior—for instance, walking in circles
- Chewing movements, lip smacking
- Intense hallucination of a smell, either pleasant or unpleasant

bends the arms, bends the neck and upper body forward, and straightens the legs. Attacks last for only a few seconds but may recur many times a day. They generally occur in children under age 3; many typically evolve into other forms of seizure later in life. Most children with infantile spasms have associated intellectual impairment or neurodevelopmental delays; mental retardation usually continues into adulthood. The seizures are difficult to stop with antiepileptic drugs.

Febrile seizures result from fever in children from 3 months to 5 years old. They occur in about 4 percent of all children and tend to run in families. Most children who have a febrile seizure have only one, and most seizures last for less than 15 minutes. Children who have a febrile seizure are slightly more likely to develop epilepsy later in life.

Epilepsy

Epilepsy is a disorder characterized by the tendency to have recurring seizures.

Overall, 2 percent of the adult population has a seizure at some time. One third of that group has recurring seizures (epilepsy). In about 25 percent of adults with epilepsy, the cause is found when tests such as an electroencephalogram (EEG) reveal abnormal electrical activity or magnetic resonance imaging (MRI) reveals scarring in small areas of the brain. In some cases, these defects may be microscopic scars resulting from brain injury at birth or later. A few specific types of seizure disorders (such as juvenile myoclonic epilepsy) are inherited. In the remaining people with epilepsy, the disease is labeled *idiopathic*—that is, no evidence of damage is found in the brain, and the cause isn't known.

People with idiopathic epilepsy usually have their first seizure between the ages of 2 and 14. Seizures before age 2 are generally caused by brain defects, chemical imbalances, or high fevers. Seizures that begin after age 25 are more likely to result from brain trauma, a stroke, or a tumor or other disease.

Epileptic seizures may be triggered by repetitive sounds, flashing lights, video games, or even touching certain parts of the body. Even minor stimuli can trigger a seizure in people with epilepsy. Very strong stimuli—such as certain drugs, low levels of oxygen in the blood, or very low

Symptoms

Epileptic seizures are sometimes classified by their characteristics. **Simple partial seizures** begin with electrical discharges in a small area of the brain, and the discharges remain confined to that area. The person experiences abnormal sensations, movements, or psychic aberrations, depending on the part of the brain affected. For example, if an electrical discharge occurs in the part of the brain that controls the right arm's muscle movements, the right arm may begin to shake and jerk; if it occurs in the anterior deep temporal lobe (the part of the brain that senses smells), the person may sense an intensely pleasant or unpleasant smell. A person who has a psychic aberration may experience, for example, a sense of déjà vu, in which unfamiliar surroundings inexplicably seem familiar.

In Jacksonian seizures, symptoms begin in one isolated part of the body, such as the hand or foot, and then "march up" the limb as the electrical activity spreads in the brain. Complex partial (psychomotor) seizures begin with a 1- to 2-minute period during which the person loses touch with surroundings. The person may stagger, move the arms and legs in strange and purposeless ways, utter meaningless sounds, fail to understand what others say, and resist help. Confusion lasts for several more minutes, followed by full recovery.

Convulsive seizures (grand mal or tonic-clonic seizures) usually begin with an abnormal electrical discharge in a small area of the brain. The discharge quickly spreads to adjoining parts of the brain, causing the entire area to malfunction. In primary generalized epilepsy, abnormal discharges over a large area of the brain cause widespread malfunction from the beginning. In either case, a convulsion is the body's reaction to the abnormal discharges. In these convulsive seizures, a person experiences a temporary loss of consciousness, severe muscle spasms and jerking throughout the body, intense turning of the head to one side, clenching of teeth, and loss of bladder control. Afterward, the person may have a headache, be temporarily confused, and feel extremely tired. Usually, the person doesn't remember what happened during the seizure.

Petit mal (absence) seizures begin in childhood, usually before age 5. They don't produce the con-

visions and other dramatic symptoms of grand mal seizures. Instead, a person has episodes of staring, fluttering eyelids, or twitching facial muscles that last 10 to 30 seconds. The person is unresponsive but doesn't fall down, collapse, or move jerkily.

In **status epilepticus**, the most serious seizure disorder, the seizure doesn't stop. *Status epilepticus is a medical emergency* because the person has convulsions with intense muscle contractions, is unable to breathe properly, and has widespread (diffuse) electrical discharges in the brain. Without rapid treatment, the heart and brain can become overtaxed and permanently damaged, and the person can die.

Diagnosis

A person who loses consciousness, has muscle spasms that shake the body, loses bladder control, or suddenly becomes confused and inattentive may be having a seizure. Yet true seizures are much less common than most people think—most episodes of brief unconsciousness or abnormal behavior aren't caused by abnormal electrical discharges in the brain.

An eyewitness report of the episode can be very helpful to doctors. The witness can describe exactly what happened, while the person who had the episode usually can't. An accurate description of the circumstances surrounding the episode is needed: how fast it started; whether it involved abnormal muscle movements, such as spasms of the head, neck, or facial muscles; tongue biting or loss of bladder control; how long it lasted; and how quickly the person recovered. The doctor also needs to know what the person experienced. Did the person have a premonition or warning that something unusual was about to happen? Did anything happen that seemed to precipitate the episode, such as certain sounds or flashing lights?

Aside from noting a description of the episode, a doctor diagnoses a seizure disorder or epilepsy using an electroencephalogram (EEG), which measures electrical activity in the brain. The test is painless and poses no risk. Electrodes are

Intile Spasms and Febrile Seizures

if seizures occur almost exclusively

Status epilepticus affects about 195,000 people each year in the United States and results in about 42,000 deaths. While people with epilepsy are at an increased risk for status epilepticus, about 60 percent of people who develop this condition have no previous seizure history. These cases often result from tumors, trauma, or other problems that affect the brain and may themselves be life-threatening.

While most seizures do not require emergency medical treatment, someone with a prolonged seizure lasting more than 5 minutes may be in status epilepticus and should be taken to an emergency room immediately. It is important to treat a person with status epilepticus as soon as possible. One study showed that 80 percent of people in status epilepticus who received medication within 30 minutes of seizure onset eventually stopped having seizures, whereas only 40 percent recovered if 2 hours had passed before they received medication. Doctors in a hospital setting can treat status epilepticus with several different drugs and can undertake emergency life-saving measures, such as administering oxygen, if necessary.

People in status epilepticus do not always have severe convulsive seizures. Instead, they may have repeated or prolonged nonconvulsive seizures. This type of status epilepticus may appear as a sustained episode of confusion or agitation in someone who does not ordinarily have that kind of mental impairment. While this type of episode may not seem as severe as convulsive status epilepticus, it should still be treated as an emergency.

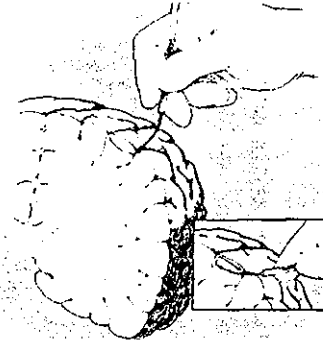
Sudden Unexplained Death

For reasons that are poorly understood, people with epilepsy have an increased risk of dying suddenly for no discernible reason. This condition, called *sudden unexplained death*, can occur in people without epilepsy, but epilepsy increases the risk about two-fold. Researchers are still unsure why sudden unexplained death occurs. One study suggested that use of more than two anticonvulsant drugs may be a risk factor. However, it is not clear whether the use of multiple drugs causes the sudden death, or whether people who use multiple anticonvulsants have a greater risk of death because they have more severe types of epilepsy.

What Research Is Being Done on Epilepsy?

While research has led to many advances in understanding and treating epilepsy, there are many unanswered

questions about how and why seizures develop, how they can best be treated or prevented, and how they influence other brain activity and brain development. Researchers, many of whom are supported by the National Institute of Neurological Disorders and Stroke (NINDS), are studying all of these questions. They also are beginning to identify and



This drawing shows what a surgeon does during a procedure called a subpial transection. A series of cuts are made in the brain and may prevent seizures from spreading. About 70 percent of patients who receive this surgery attain long-term remission.

Citizens United for Research in Epilepsy (CURE)

8110 Woodside Lane
Burr Ridge, Illinois 60525
(630) 734-9957
www.CUREpilepsy.org

CURE is a global grassroots organization dedicated to finding a cure for pediatric intractable epilepsy. CURE works to stimulate innovative research through private funding sources and by publicizing the long overlooked need for a cure for this disease.

Epilepsy Foundation

4351 Garden City Drive
Suite 406
Landover, Maryland 20785
(301) 459-3700
(800) 332-1000
www.epilepsyfoundation.org

The Epilepsy Foundation is the national voluntary health agency that works for people affected by seizures through research, education, advocacy, and service. Its goals are the prevention and cure of seizure disorders, the alleviation of their effects, and the promotion of independence and optimal quality of life for people who have these disorders. Epilepsy Foundation affiliates serve people with epilepsy and their families in more than 100 communities throughout the United States.

National Association of Epilepsy Centers

5775 Wayzata Boulevard
Suite 200
Minneapolis, Minnesota 55416
(612) 525-4511

The goals of this Association, which includes the majority of specialized epilepsy centers in the United States, are to provide information about the care of patients with epilepsy to the appropriate government and industry officials; to exchange information among its members; and to participate in developing standards for programs providing services.

National Organization for Rare Disorders (NORD)

P.O. Box 8923
New Fairfield, Connecticut 06812-8923
(203) 746-6518
(800) 999-NORD (6673)
www.rarediseases.org

The National Organization for Rare Disorders (NORD), a federation of voluntary health organizations dedicated to helping people with rare "orphan" diseases, is committed to the identification, treatment, and cure of rare disorders through programs of education, advocacy, research, and service.

For information on prescription medicines, contact:

National Council on Patient Information and Education

4915 St. Elmo Avenue
Suite 505
Bethesda, Maryland 20814
(301) 656-8565
www.talkaboutrx.org

The National Council on Patient Information and Education is a coalition of organizations committed to providing patients, consumers, and caregivers with useful and appropriate medicine information.

Pregnant women with epilepsy can help researchers learn how epilepsy drugs affect unborn children by participating in the following program:

Antiepileptic Drug Pregnancy Registry Genetics and Teratology Unit

149 CNY-MGH East
Room 5022A
Charlestown, Massachusetts 02129
(617) 726-7739
(888) 233-2334
Fax: (617) 724-8307
<http://neuro-www2.mgh.harvard.edu/aed/registry.nclk>

G-3

G-3

RELEASE FROM RESPONSIBILITY FOR MEDICAL TREATMENT

I, Jason Bensen, an inmate at S.C.I. - Smithfield
(Inmate's name) (Institution)
 have been advised by the physician named below that I am in need of medical treatment for:

Heroin

I understand the nature of the treatment is: (Attending physician: Give brief description of the medical treatment required, and the possible consequences of this inmate not receiving it.)
 By refusing this medication (Phenobarbital), I understand that my
 condition may become much worse and lead to possible deterioration of my
 health, and possibly even death.

I hereby refuse this treatment. I have been fully advised of the nature of my ailment or injury and fully realize the effects that may result from my refusal to accept the prescribed treatment. I hereby release the attending physician, and the institution from all legal responsibility for any ill effects which may result from my refusal to accept medical treatment.

In signing this, I certify that the above has been read and fully explained to me.

Inmate Signature	Date	Physician Signature	Date
Witness Signature	Date	Attending Health Care Provider Signature	Date

Release from Responsibility for
 Medical Treatment
 Commonwealth of Pennsylvania
 Department of Corrections
 DC-462
 Revised 9-2000

Inmate Name: Bensen, Jason
 Inmate Number: DS6483
 DOB: 09-27-76
 Facility: SCIS

The Honorable Thomas Blewitt
U. S. Magistrate Judge
United States District Court
235 North Washington, Avenue
Scranton, PA 18501-1148

Mr. Jason Benson
DS-6483, SCI-Smithfld
1120 Pike Street
Huntingdon, PA 16652
P.O. Box 999

November 28, 2001

FILED
SCRANTON

DEC 04 2001

Re: Plaintiff's Response to the Defendant's
Motions for Summary judgment and
Statements of Material Facts; CV-01229

DEPUTY CLERK

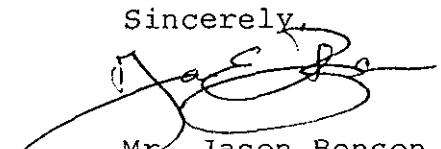
Dear Judge Blewitt:

The plaintiff Jason Benson, filed or submitted his response to the defendant's Motions for Summary Judgment and Statements of Material Facts with the official's here at SCI-Smithfield to be copied and mailed to this Court, on 11/23/01. Yesterday, 11/27/01, the plaintiff found out that his petitions/motions had not been copied or mailed because he needed four (4) copies of each and the total came to more than \$3.20. Nonetheless. I'm sending the Court the original of my Response.

Four copies of plaintiff's response totals \$16.00 and that doesn't include the statement of material facts in dispute. Clearly, this is a problem that could potentially cost the plaintiff considerable hardship, i.e., the dismissal of his complaint. Plaintiff also filed an Official Grievance about the fact that he is limited to funds that can't cover the necessity of copying his pleadings.

In light of the above, the plaintiff respectfully requests that this Honorable Court make a ruling on his Motion to Preclude Expert Testimony and Sanctions for Blatent Discovery Violations; thereby ordering the Defendant's to resubmit their Dispositive Motions accordingly.

Sincerely,


Mr. Jason Benson, Plaintiff

Note: See Cash Slip & my copy of the Grievance.

C-138A CASH SLIP	COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF CORRECTIONS
1. REQUISITIONING INMATE INSTITUTIONAL NUMBER: <u>25C4183</u> LOCATION: <u>CA108</u> DATE: <u>11/23/01</u>	
2. RECEIVING INMATE INSTITUTIONAL NUMBER: _____ LOCATION: _____ DATE: _____	
3. ITEMS TO BE CHARGED TO MY ACCOUNT Please deduct postage for this <u>EGAL MAIL</u> , addressed to: <div style="text-align: center; margin-top: 20px;"> The Honorable Thomas Blawie U.S. Magistrate Judge United States Dist. Court 235 N. Washington Ave Scranton, PA 18501-1148 </div>	
INMATE'S SIGNATURE: <u>[Signature]</u> 5. OFFICIAL APPROVAL: <u>[Signature]</u>	
6. BUSINESS OFFICE'S SPACE CHARGE ENTERED: _____ DATE: _____ BOOKKEEPER: _____	

S.C.I. SMITHFIELD
INMATE PASS

Name: Benson Date: 11-28-01 Number: D56483

TO: _____ FROM: _____

() BLOCK..... () SHOP..... () FACTORY..... () TREATMENT..... () DOCTOR/MEDICAL DEPT..... () DENTIST..... () PROT. OR CATH. CHAPLAIN..... () EDUCATION BLDG..... () OTHER L.B.

TIME DEPARTED 1345 / PM Official

TIME ARRIVED 1350 / PM Official

TIME DEPARTED 1400 / PM Official

PASS RETURNED TO ISSUING AUTHORITY _____

David B.

Enclosure by 10201-148
532 N. Main Street
United States Dist. Court
112 Main Street
The Honorable Judge Bennett

RECEIVED MAIL '01
Blessed request for this


DEC 183 0108 11/53/01

DC-804
Part 1COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF CORRECTIONS
P.O. BOX 598
CAMP HILL, PA 17001-0598

FOR OFFICIAL USE ONLY

GRIEVANCE NUMBER

OFFICIAL INMATE GRIEVANCE

TO: FACILITY GRIEVANCE COORDINATOR Sharon M. Burks	FACILITY:	DATE: November 27, 2001
FROM: (INMATE NAME & NUMBER) Mr. Jason Benson DS-6483	SIGNATURE of INMATE: 	
WORK ASSIGNMENT: None	HOUSING ASSIGNMENT: CA/08	
<p>INSTRUCTIONS:</p> <ol style="list-style-type: none"> 1. Refer to the DC-ADM 804 for procedures on the inmate grievance system. 2. State your grievance in Block A in a brief and understandable manner. 3. List in Block B any actions you may have taken to resolve this matter. Be sure to include the identity of staff members you have contacted. <p>A. Provide a brief, clear statement of your grievance. Additional paper may be used, maximum two pages.</p> <p>Since November 23, 2001, I have been trying to have my Civil Matter Motion copied four (4) times. But, I've been notified that I cannot go over/exceed \$3.20.</p> <p>My Motion will cost \$4.00 and some change each, totaling at least \$10.00 and a maximum of \$17.60 and that's not including postage.</p> <p>This restriction can cost/cause me to lose my civil matter. Being as though I asked for damages from the defendant's in my matter, I believe it will only be fair to all that I be reimbursed the amount I can/will lose should my case be dismissed because of the fact that I can't get copies and make certain deadlines; i.e., one million dollars \$1,000,000.</p> <p>In addition, I may need to add whomever's responsible as a defendant in my civil matter as a precaution, and I must notify the Court's about this situation.</p> <p>B. List actions taken and staff you have contacted, before submitting this grievance.</p> <p>The only people I could speak with about this matter is one of the librarian's.</p>		

Your grievance has been received and will be processed in accordance with DC-ADM 804.

Signature of Facility Grievance Coordinator

Date